

5-15.000 LAND ACQUISITION SECTION

- 5-15.001 Area of Responsibility**
- 5-15.002 Policy Regarding Consent to Trial of Condemnation Cases by United States Magistrate**
- 5-15.100 Prior Approval Requirements**
- 5-15.200 Organization of Land Acquisition Section**
- 5-15.201 Statutes Administered**
- 5-15.300 Supervision and Handling of Land Acquisition Section Cases -- Direct Referral Cases**
- 5-15.320 Assignment of Case Responsibility**
- 5-15.321 Category 1 Matters**
- 5-15.322 Category 2 Matters**
- 5-15.500 General Procedures in Land Acquisition Litigation**
- 5-15.511 Rule 71A, Federal Rules of Civil Procedure**
- 5-15.512 Declaration of Taking Act**
- 5-15.513 Local Practice**
- 5-15.514 Division Programs to Expedite Handling of Condemnation Cases**
- 5-15.515 Transmittal of Papers to the Land Acquisition Section**
- 5-15.516 Transmittal of Record**
- 5-15.517 Closing File**
- 5-15.520 Institution of Actions -- Initial Documents Sent to United States Attorney**
- 5-15.522 Preparing and Filing Complaints**
- 5-15.523 Land Subject to Options or Contracts of Sale by Acquiring Agency**
- 5-15.524 Lis Pendens**
- 5-15.525 Service**
- 5-15.526 Possession**
- 5-15.530 Title Evidence -- Purpose**
- 5-15.532 Title Evidence Usually Supplied by Acquiring Agency**
- 5-15.533 Continuation of Title Evidence**
- 5-15.534 Title Evidence -- Title Company Liability**
- 5-15.535 Title Evidence -- Certification of Ownership**
- 5-15.536 Certificates as to Parties in Possession and Mechanics' Liens**
- 5-15.537 Final Title Evidence**
- 5-15.538 Title Evidence -- Curative Materials**
- 5-15.540 Objections to Taking -- Answer of Defendant**
- 5-15.542 Objections to Taking -- Notice of Appearance**
- 5-15.543 Alteration of Estate Sought to Be Condemned**
- 5-15.544 Exclusion of Property Acquired by Declaration of Taking**

5-15.545 Stipulation of Exclusion
5-15.546 Termination of Temporary Use Cases
5-15.550 Determination and Payment of Just Compensation -- Right to Trial by Jury or Commission
5-15.552 Retaining Independent Appraisers
5-15.553 Disbursement of Funds Deposited in Court
5-15.554 Refund of Excess Funds Deposited
5-15.555 Refund of Balance When Owner Not Locatable
5-15.556 Reimbursement in Certain Cases for Moving, Relocation and Related Expenses
5-15.560 Post-Trial Motions -- Notification to Division of Awards
5-15.562 Motions for New Trial -- Objections to Commission's Awards
5-15.580 Judgments
5-15.581 Contents of Judgment
5-15.582 Satisfaction of Deficiency Judgments
5-15.590 Recommendation With Respect to Appeals
5-15.592 Procedure in Recommending Appeal
5-15.600 Settlement and Dismissal of Cases
5-15.611 Partial Settlements
5-15.620 Settlement Procedures
5-15.630 Authority of United States Attorneys to Settle Condemnation Cases
5-15.631 Limitations on Delegations
5-15.632 Authority of Agency Representatives to Recommend Acceptance or Rejection of Settlement Offers
5-15.640 Transmittal of Compromise Offer to Land Acquisition Section -- Recommendations with Respect to Acceptance
5-15.650 Dismissal or Abandonment of Condemnation Case
5-15.964 Selection of Qualified Appraisers and Other Experts
5-15.965 Fees for Appraisers and Other Expert Witnesses

5-15.001 Area of Responsibility

The Land Acquisition Section is responsible for the institution and prosecution of condemnation proceedings on behalf of the United States, and for approving title to land acquired by the United States by purchase or condemnation.

5-15.002 Policy Regarding Consent to Trial of Condemnation Cases by United States Magistrate

It is the policy of the Division to encourage, in appropriate cases, consent to the conduct of condemnation trials by United States Magistrates if the attorney in charge of the case determines that trial before a magistrate would be in the litigating interests of the United States. For a complete statement of this policy, *see* ENRD Resource Manual at 3.

5-15.100 Prior Approval Requirements

Prior approval requirements for the Land Acquisition Section are set forth in USAM 5-2.000.

5-15.200 Organization of Land Acquisition Section

The Section is administered by a Chief and an Assistant Chief. The Section is divided into a number of units.

A. Litigation Unit. Attorneys assigned to the Litigation Unit supervise the handling of all cases and handle all aspects of certain cases including pre-trial, trial and post-trial activities.

B. Title Unit. The Title Unit prepares opinions of title for land acquired by the United States by purchase pursuant to the provisions of 40 U.S.C. § 255.

C. Appraisal Unit. The Appraisal Unit reviews appraisals, settlement proposals and appraisal guidelines for cases in condemnation and provides assistance to Section attorneys and United States Attorneys in trial preparation and procedures. *See* USAM 5-9.100 for further information concerning the function of this unit.

D. Administrative Unit. The Administrative Unit is responsible for processing all requests for the institution of condemnation proceedings; preparing all intermediate and final opinions of title of the Attorney General; and managing LDTS, a comprehensive computer-based information system designated to track all significant events from the time of its inception through final disposition of the case.

5-15.201 Statutes Administered

The litigation of the Land Acquisition Section is conducted pursuant to the following authorities:

- A. Act of August 1, 1888, c. 728, § 1, 25 Stat. 357, *as amended*, 40 U.S.C. § 257 (Condemnation Act);
- B. Act of February 26, 1931, c. 307, § 1, 46 Stat. 1421, 40 U.S.C. § 158a-f (Declaration of Taking Act);
- C. Act of August 27, 1958, 72 Stat. 892, 23 U.S.C. § 107 (interstate highway rights-of-way acquisition);
- D. Rule 71A, Fed. R. Civ. P.;
- E. 16 D.C. Code §§ 1351-1368 (1973 ed.) (federal land acquisition in the District of Columbia);
- F. Joint Resolution of September 11, 1841, 5 Stat. 468, *as amended*, 40 U.S.C. § 255 (Examination of Title Act).

5-15.300 Supervision and Handling of Land Acquisition Section Cases -- Direct Referral Cases

Land acquisition cases may not be referred directly to United States Attorneys by agencies. Actions to acquire land may not be initiated by a United States Attorney except upon their referral to him/her by the Attorney General, through the Land Acquisition Section.

5-15.320 Assignment of Case Responsibility

The extent to which a United States Attorney is responsible for handling any condemnation case is determined by the classification given that case by the Land Acquisition Section. Condemnation matters are classified into two categories, as described at USAM 5-15.321 and 5-15.322. A case may be reclassified at any time if this becomes necessary due to changed circumstances.

5-15.321 Category 1 Matters

Category 1 consists of cases in which there are no actual or anticipated policy questions, peculiar appraisal problems, novel legal questions, or claimed compensation in excess of \$100,000. United States Attorneys will have full responsibility for the Category 1 cases, subject only to:

- A. Such assistance on tactical or legal matters as they may request from the Department of Justice; and
- B. Approval of the Justice Department of any settlements in excess of \$200,000 or under that amount when:
 - 1. For any reason, the compromise of a particular claim, as a practical matter, will control or adversely influence the disposition of related claims totalling an amount in excess of \$200,000; or
 - 2. When the revestment under 40 U.S.C. § 285f of any land or improvements or any interests in land are involved, except in cases in which the land owner desires to remove buildings, trees and shrubs, crops, or fixtures attached to the realty which are not needed or desired by the government, provided that the exclusion has been approved by the local representative of the acquiring agency; or
 - 3. Because a novel issue of law or question of policy is presented, or for any other reason, the settlement offer should receive the attention of the Environment and Natural Resources Division of this Department.

The United States Attorney should send copies of court papers to the Department of Justice for information, comment, and suggestions, and should cooperate in the reasonable implementation of all suggestions made.

5-15.322 Category 2 Matters

Category 2 consists of cases in which there are actual or anticipated policy questions, peculiar appraisal problems, novel legal questions, or claimed compensation in excess of \$100,000. Category 2 cases will be the joint responsibility of the United States Attorneys' Offices and the Department of Justice. The participation of the Land Acquisition Section may range from mere counsel and advice, on the one hand, to management of the case on the other, depending upon national interests. The provisions of USAM 5-1.324 are applicable to Category 2 matters.

5-15.500 General Procedures in Land Acquisition Litigation

The instructions herein set forth deal in broad terms with general procedures peculiar to condemnation litigation.

5-15.511 Rule 71A, Federal Rules of Civil Procedure

Rule 71A of the Fed.R. Civ.P. governs the procedure to be followed in all cases for the condemnation of real and personal property under the power of eminent domain. All condemnation cases must be prosecuted in strict conformity with this Rule. Rule 71A provides that the general Fed.R. of Civ.P. shall be applicable to all cases, except as otherwise provided in Rule 71A. There must be, therefore, strict conformity with the general rules, subject to the complaint, the form, content, and method of service of notice to defendants, and the form and content of the answer or appearance of defendants.

5-15.512 Declaration of Taking Act

The Declaration of Taking Act (*see* 40 U.S.C. § 258(a), (e)) authorizes the United States to acquire an interest in land immediately upon the filing of a declaration of taking with a court and the deposit in the court of the estimated compensation stated in the declaration.

United States Attorneys and field attorneys must comply promptly with instructions from the Department for filing of a declaration of taking and the deposit of estimated just compensation pursuant to the Declaration of Taking Act (*see* 40 U.S.C. § 258(a), (e)). Duplicate originals of a dated receipt of the clerk of the court for the amount deposited as estimated just compensation should be obtained and transmitted to the Department. A judgment on declaration of taking is not required unless specifically requested by the Department. The judgment, if obtained, should contain a finding by the court of the filing of the declaration of taking and the deposit of estimated compensation, the dates thereof, and an adjudication that title to the exact extent of the estate or interest described in the declaration is vested in the United States. The judgment should also contain an order for the surrender of possession if requested by the acquiring agency. Unnecessary recitations should be omitted from the judgment in accordance with Rule 54(a), Fed.R. Civ.P. Service of copies of the judgment upon defendants is controlled by Rules 5 and 77(d), Federal R. Civ.P. The case must be prosecuted to a speedy conclusion in order to minimize the amount of interest which the government must pay on the amount of the ultimate award in excess of the deposit.

Under the Declaration of Taking Act and Rules 71A(c)(2) and (j), Fed.R. of Civ.P., the court may order that the monies deposited as estimated compensation, or any part thereof, shall be paid forthwith to the rightful claimant. The purpose of the Declaration of Taking Act is, first, to give the government title to and possession of the land and to relieve the government of the burden of interest accruing on the amount of the deposit, and second, and of equal importance, to make funds available for immediate distribution to the former owner in the discretion of the court.

In furtherance of this purpose and in accordance with Rule 71A(j), Fed.R. of Civ.P., United States Attorneys and field attorneys are required actively to assist landowners and the court, as *amici curiae* in effecting prompt distribution of funds deposited pursuant to the Declaration of Taking Act. Detailed instructions with respect to distribution are set forth in the ENRD Resource Manual at 13.

Immediately upon the filing of a declaration of taking and the deposit of estimated compensation, the landowner and other parties interested should be notified by letter, by the United States Attorney or field attorney, of the deposit and the amount thereof and that government counsel will render assistance in effecting advance distribution without prejudice to the right of the landowner to claim a larger amount. A form letter with which there should be substantial conformance is found at the ENRD Resource Manual at 28.

5-15.513 Local Practice

Practices in land acquisition cases vary from district to district, depending upon the rules and customs of the courts.

In several districts, local rules have been adopted which permit up to 15 tracts, economic units or ownerships, to be included in one declaration of taking, but require that for each such tract, economic unit or ownership, a separate civil action will be opened by the clerk of the court. These local rules generally follow the guidelines suggested by the United States Judicial Conference, as set out in the ENRD Resource Manual at 1. It should be noted that before this filing procedure can be utilized a local rule must be adopted by the court. A special form of complaint has been prepared to conform to the guidelines. *See* ENRD Resource Manual at 25.

5-15.514 Division Programs to Expedite Handling of Condemnation Cases

The Division has developed a program called the "Nine-Point Program for Settlement or Trial Within a Year" as a means of expediting the handling of condemnation cases. Details with respect to this program are set forth in the ENRD Resource Manual at 2. United States Attorneys are urged to become familiar with this program and to the fullest extent possible to process land acquisition cases in their districts in this methodical way.

The Division issued a memorandum dated June 6, 1980, to all United States Attorneys, announcing the Department of Justice policy favoring consent to trial of land condemnation cases by United States Magistrates in appropriate circumstances, as defined in 28 U.S.C. § 50.11. The policy furthers the goals of the Federal Magistrates Act of 1979 (Pub.L. 96-82) and will also serve to expedite trial in appropriate circumstances. All attorneys in the United States Attorneys' offices are encouraged to seek the consent of parties to trials, either by a magistrate or by a jury presided over by a magistrate, in appropriate cases, and to ensure that parties in cases filed before October 10, 1979, are notified of their right to consent to the magistrates' exercise of litigation jurisdiction. For a detailed statement of the Division's policy in this regard, see the ENRD Resource Manual at 3.

5-15.515 Transmittal of Papers to the Land Acquisition Section

The Land Acquisition Section must be informed promptly by letter including the forwarding of all pleadings, where pertinent, of all major steps taken in each case, such as the completion of personal service of notice and of publication of notice (*see* ENRD Resource Manual at 8), the dates of all trials and hearings and the results thereof, and the filing by the United States Attorney and any defendant of a notice of appeal or a motion for new trial. It is essential that there be strict observance of the foregoing rule.

5-15.516 Transmittal of Record

The United States Attorney or field attorney shall transmit to the Land Acquisition Section, at the stages of the case hereinafter designated, successive partial transcripts which will be combined in the Department at the conclusion of the case into a complete transcript of record. No further or additional transcript is required and no documents included in one transcript need be duplicated in any subsequent transcript.

A. Initial Transcript. Upon the institution of the case there shall be transmitted to the Department an initial transcript, which shall contain the following documents:

1. One certified and one conformed copy of the complaint (*see* ENRD Resource Manual at 24 or 25);
2. Two conformed copies of the notice of condemnation (ENRD Resource Manual at 27);
3. If a declaration of taking is filed, duplicate originals of the dated receipt of the clerk of the court for the moneys deposited as estimated compensation;
4. If a judgment is entered upon a declaration of taking or an order of possession (ENRD Resource Manual at 44) is obtained, one certified and one conformed copy of the judgment or order; and
5. One certified and one conformed copy of any order and two conformed copies of any other papers filed in connection with the institution of the case.

B. Intermediate Transcript. Upon the entry of any judgment determining just compensation (whether for one or more tracts in a case) there shall be transmitted to the Department an intermediate transcript consisting of:

1. One certified and three conformed copies of the judgment if the Department is to obtain the deficiency, or one certified and one uncertified copy of the deficiency judgment together with a copy of the letter of transmittal if the judgment has been transmitted with a request for payment to the local representative of the acquiring agency as authorized at USAM 5-15.582;

2. One conformed copy of all papers of whatever nature filed in the case prior to and including the date of entry of the judgment (but excluding copies of papers included in transcripts previously transmitted to the Department and excluding orders of distribution);
3. Evidence of any *lis pendens* recorded among the local land records, *see* USAM 5-15.524;
4. The evidence of title, properly continued, *see* USAM 5-15.533; and
5. The certificate as to parties in possession and mechanics' liens. *See* USAM 5-15.536.

When an intermediate transcript is transmitted to the Department, the United States Attorney or field attorney should state in the letter of transmittal that the transcript constitutes, or when combined with partial transcripts previously transmitted will constitute, a complete transcript of the record of the case to date. If there is no deficiency the intermediate transcript may be combined with the final transcript.

C. Final Transcript. At the conclusion of the proceedings, the Attorney General prepares an opinion directed to the acquiring agency. Therefore, upon the entry of a final judgment (whether for one or more tracts in the case) there shall be transmitted to the Department a final transcript consisting of:

1. One certified and one conformed copy of the final judgment, unless copies of the judgment were previously transmitted to the Department with the intermediate transcript;
2. Duplicate originals of the dated receipt of the clerk of the court for any moneys deposited pursuant to a judgment determining compensation;
3. The evidence of title, properly continued as provided in USAM 5-15.533 unless needed for use in effecting distribution of just compensation, in which event the evidence of title should be transmitted to the Department upon the completion of distribution. The transmittal letter should indicate how any title objections noted in the title evidence have been eliminated or should have attached to it any curative data obtained to eliminate such objections;
4. Evidence of the disposition other than in the case of any outstanding compensable interests disclosed by the evidence of title;
5. All other related papers and curative data pertinent to the proceeding, such as affidavits, deeds, disclaimers (*See* ENRD Resource Manual at 49), releases, etc., unless other papers transmitted will indicate that the liens and other interests are barred by service of process on the necessary parties;
6. Evidence that complete distribution has been ordered of all funds which have been deposited in court by the government (however, transmittal of the papers enumerated above should not be deferred pending completion of this step); and
7. If no declaration of taking was filed, one certified and one plain copy of the order vesting title should be forwarded to the Department.

5-15.517 Closing File

No case may be considered closed until:

- A. All funds have been ordered disbursed;
- B. All pending matters, such as motions for new trial or appeals, have been terminated;
- C. In use cases:
 1. The final term has expired, or the government's occupancy has otherwise terminated, and
 2. The question of restoration damages has been adjudicated or otherwise disposed of.

5-15.520 Institution of Actions -- Initial Documents Sent to United States Attorney

United States Attorneys will be advised when they have been authorized by the Attorney General to acquire land on behalf of the federal agency. Accompanying the authorization to the United States Attorney to acquire the land will usually be the following documents:

- A. A copy of the government official's letter to the Attorney General requesting the institution of condemnation proceedings, and citing the authority for the taking;
- B. Where immediate title is required, a declaration of taking and one copy thereof, to which will be attached a description of the land to be acquired and a map showing the land;
- C. In cases where a declaration of taking is to be filed, a check for the estimated compensation, or instructions indicating how the check may be obtained; and
- D. Advice as to classification of the case and division of responsibility for the prosecution of the case between the United States Attorney and attorneys in the Environment and Natural Resources Division. *See* USAM 5-15.300 *et seq.*

On occasion the letter of transmittal may contain special instructions which will govern procedure if at variance with anything contained herein.

5-15.522 Preparing and Filing Complaints

Upon receiving the letter authorizing the initiation of an action to condemn land, the United States Attorney shall:

- A. Secure from the acquiring agency the materials described in the ENRD Resource Manual at 4.
- B. Prepare the documents described in the ENRD Resource Manual at 5; and
- C. File the complaint pursuant to the instructions in the ENRD Resource Manual at 6.

5-15.523 Land Subject to Options or Contracts of Sale by Acquiring Agency

When the land involved in a condemnation case is the subject of a valid accepted option or contract of sale, executed both by the presumptive owners and by a duly authorized representative of the acquiring agency prior to the institution of the condemnation case, the accepted option or contract is binding upon the signatories thereto in the condemnation case. The accepted option or contract should be pleaded in the complaint in condemnation. The United States Attorney or field representative is authorized without the prior approval of the Attorney General to have a judgment entered in the amount of the accepted option or contract provided that the local representative of the acquiring agency has advised in writing that the land has not decreased in value due to any action of the owners since the date of the option or contract, and all special and unusual conditions and requirements of the option or contract, if any, have been performed. It is also necessary that a determination shall have been made that the optionors in the accepted option or the vendors in the contract of sale are the sole and only parties entitled to the just compensation, other than taxing authorities, lienholders and encumbrancers whose claims may be satisfied from the award.

The procedure for summary judgments under Rule 56, Fed.R. Civ.P., should be utilized in obtaining the entry of consent judgments on options and contracts of sale, but only after the expiration of the time for filing of answers or appearance by defendants, *see* USAM 5-15.540 and 5-15.542.

5-15.524 Lis Pendens

In connection with the institution of condemnation proceedings, a notice of the pendency of the action or lis pendens shall be filed or recorded among the proper local records, except in those jurisdictions where the law is settled that the commencement of the action is notice to all persons affected. If more than one county is involved, a separate notice is necessary for each county.

The steps necessary for the commencement of lis pendens notice are determined by the law of the particular state. Some states follow the common law, which is that notice commences upon the mere filing of the complaint. Some common law states, however, have the additional requirement that the defendants must be served with process before notice will commence. In other states the common law has been superseded by statute and the filing of a prescribed form of notice of lis pendens is necessary to commence notice. And where, under local law, either a declaration of taking or a judgment on declaration of taking is entitled to be recorded and is deemed to give notice, the recording thereof would constitute notice. In no instance should both a lis pendens notice and a judgment on declaration of taking be recorded.

5-15.525 Service

Service of the notice of condemnation must be made in accordance with Rules 4(c) and (d), Fed.R. of Civ.P. A copy of the complaint need not be served with the notice of condemnation. The Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1178), as amended, is in full force and effect and is applicable to condemnation cases. The United States Attorney or field attorney must investigate to determine whether any defendant who has not answered or filed an appearance is in military service with the Armed Forces or is in public Health Service on duty with the Armed Forces. The United States Attorney or field attorney must comply strictly with the provisions of the Act (50 U.S.C., App. 520) by filing necessary affidavits and moving for the appointment of an attorney ad litem, when required.

Complete instructions with respect to service are set forth in the ENRD Resource Manual at 8.

5-15.526 Possession

Where a declaration of taking has been filed, United States Attorneys and field attorneys must comply with instructions from the Department requiring the entry of an order for the surrender of possession of property to the government. *See* ENRD Manual at 44. Unless the property is vacant the acquiring agency should be requested to advise that the necessary 90 days' written notice has been given of the date by which possession is required if any person lawfully occupying the property shall be required to move from a dwelling or to move his/her business or farm operation, as required by Section 301(5) of Public Law 91-646, approved January 2, 1971, 84 Stat. 1905. Notice of the entry of the order (ENRD Resource Manual at 44), and of the date provided therein for the surrender of possession are controlled by Rules 5 and 77(d), Fed.R. Civ.P. Service of a copy of the order should be made upon the person in possession of the land in accordance with Rule 5(b), Fed.R. of Civ.P., or service should be made in the manner and within the time directed by the court in the order.

If the party in possession refuses to surrender possession as provided in the order, application should be made, in accordance with Rule 70, Fed.R. Civ.P., for a writ of assistance to put the government in possession. Application for a citation in contempt under Rule 70 should not be made without the prior approval of the Department.

5-15.530 Title Evidence -- Purpose

Rule 71A(c), Fed.R. Civ.P., provides that there shall be named defendants in condemnation cases all persons having or claiming an interest in the property condemned whose names can be ascertained by a reasonably diligent search of the local land records, considering the character and value of the property involved and the interest or estate to be acquired. Persons having an interest in property include those owning an estate in the land (e.g., fee owner, lessee, tenant) and those having a lien or encumbrance on the land (e.g., mortgagee, taxing authority, material person, mechanic). Evidence of title must, therefore, be obtained and examined for a determination of the necessary and proper parties defendant. Persons having (or claiming) an interest in the property at the time of the commencement of lis pendens notice, *see* 5-15.524 are necessary parties and must be joined in the action as defendants. By joining as defendants all persons disclosed by the title evidence as having a possible interest in the property as of the commencement of lis pendens notice, and, in the course of proceedings, by giving those parties notice and opportunity to be heard at the trial or hearing on just compensation, due process will have been afforded and the final judgment will be res judicata as to those parties. If the United States secures a judgment of condemnation fixing compensation and ordering distribution to the wrong person or to fewer than all persons entitled thereto, the party having a compensable interest who was omitted from the proceedings has been denied due process and is entitled to bring an action against the United States for just compensation. The United States may thus be compelled to pay twice for the same acquisition. Where the interest of the omitted party was a matter of record but was not disclosed by the title evidence, the United States may recover its loss from the title company or abstractor up to the limit of liability. *See* USAM 5-15.534.

5-15.532 Title Evidence Usually Supplied by Acquiring Agency

In condemnation proceedings the necessary evidence of title is made available to the Department by the acquiring agency. In compliance with applicable standards, title evidence conforming to the requirements of the Department should be obtained from approved abstractors or title companies. Contracts for the title evidence should include as a separate item the costs of any necessary continuation of the evidence of title.

5-15.533 Continuation of Title Evidence

The evidence of title must be continued to a date subsequent to the recordation of the lis pendens, declaration of taking or of the judgment on the declaration of taking. On the basis of information, if any, disclosed by the continuation of the evidence of title, and the certificate of inspection and possession, USAM 5-15.536 any additional parties shown by the continuation to have, or who may claim to have, any interest in the property involved must be joined as defendants in the case, and any changes in the naming of necessary and proper parties defendant must be effected. The procedure for adding, dropping, or substituting parties is by motion and order under Rules 21 and 71A(g) and (i)(3), Fed.R. Civ.P. An amended complaint need not be filed. Detailed instructions with respect to continuing title evidence are set forth in the ENRD Resource Manual at 7.

5-15.534 Title Evidence -- Title Company Liability

Title evidence, in addition to being properly continued, must also comply with the Department's requirements with respect to the limitation of the title company's liability.

Generally, certificates of title (ENRD Resource Manual at 48), and title insurance policies shall not limit the liability of the title company to a sum less than 50% of the reasonable value of the property. As to acquisitions valued at more than \$50,000, the limitation of liability of the issuing title company under the certificate of title or title insurance policy may be limited to 50% of the first \$50,000 and 25% of that portion of the value in excess of that amount.

The "reasonable value of the property," in the context of condemnation proceeding, is the amount awarded as just compensation in the judgment. Where the title company has limited its liability to a sum substantially less than that permitted, an endorsement to the certificate or policy must be obtained from the title company providing for an acceptable amount of coverage. (Reasonable compliance with the requirements as to the percentage limitation of liability is all that is required.)

Recitations in the title evidence that the limitation of liability is "as per agreement," "to be agreed upon," or the like, are unsatisfactory. In such instances it will be necessary to obtain an endorsement providing adequate coverage in a stated dollar amount. Title evidence that does not state dollar amounts of coverage, but states that coverage is in "the amount of the award" or a stated percentage (not less than permitted) of the award, is acceptable.

5-15.535 Title Evidence -- Certification of Ownership

It is essential that the title evidence disclose the names of the persons in whom title was vested at the time of commencement of notice. *See* USAM 5-15.530. This should present no problem in cases instituted by complaint only.

In cases in which a declaration of taking has been filed and either the declaration itself or a judgment thereon has been recorded, the continued evidence of title typically recites that title to the property as of the effective date thereof is vested in the United States of America, followed by an appropriate reference to the recordation of the declaration or judgment. However, such a recitation must also be accompanied by a statement that prior to the filing for record of the declaration or judgment, as the case may be, title was vested in a named person or persons. An example of a satisfactory endorsement is given below:

ENDORSEMENT

Attached to Policy No. 87654

Issued by

URBAN TITLE INSURANCE COMPANY

Schedule of A of the above policy is hereby amended in the following particulars:

Paragraph 2 of Schedule A is hereby deleted and the following is substituted:

2. Title to the estate or interest covered by this policy at the date hereof is vested in the UNITED STATES OF AMERICA by judgment upon declaration of taking recorded January 15, 1973, Book 312, Page 923, Deed Records of Benton County, Missouri. Prior to filing said judgment, title was vested in John Smith and Mary Smith, his wife.

Without such a certification by the title company as to prior ownership, it cannot be ascertained whether the person from whom the property has been taken by the condemnation proceeding has been made a defendant in the action. Insurance that title is vested in the United States by declaration of taking or judgment thereon recorded on a given date is no protection against the loss that might result in the event that the prior owner was not joined in the action and subsequently recovers compensation from the United States in a separate proceeding.

5-15.536 Certificates as to Parties in Possession and Mechanics' Liens

In order to insure the joinder as defendants in the condemnation cases of all parties who have, or who may claim to have, any right or interest in the property involved, whether or not such right or interest is disclosed by the evidence of title, the United States Attorney or field attorney should obtain a certificate showing (a) whether any party is in actual or constructive possession of all or any part of the land whose rights, if any, are not a matter of record, and (b) whether within the period provided by local law there has been any work or labor performed upon the property or any material furnished in connection with any work upon the property which would entitle

anyone to a lien. Generally, the necessary certificate of inspection may be obtained from the local representative of the acquiring agency or the custodian for the government of the property. The certificate should conform substantially with that set out in the ENRD Resource Manual at 47. All or any number of the tracts or parcels of land in a particular case may be included in one certificate of inspection, if more convenient than using a separate certificate for each tract.

All parties disclosed by the certificate as to possession and mechanics' liens to have an interest in the property involved must be joined as defendants in the case as provided at USAM 5-15.530.

When submitting a final transcript; USAM 5-15.516 to the Department, the title evidence is incomplete unless it includes a certificate of parties in possession and mechanics' liens.

5-15.537 Final Title Evidence

The final evidence submitted to the Department in the final transcript must satisfy the following requirements:

A. The abstract must be continued to the date of commencement of lis pendens or other notice, USAM 5-15.524;

B. A supplemental certificate or continuation title report, binder, or endorsement based on a search of the records to the date of commencement of lis pendens or other notice must be obtained. No final certificate or policy is required provided the preliminary certificate, report, or binder does not improperly limit the title company's liability, USAM 5-15.534 or the company assumes the required financial liability and the certificate, report, or binder contains no provision under which the issuing company denies liability for losses if the final certificate or policy is not issued.

5-15.538 Title Evidence -- Curative Materials

When transmitting title evidence to the Department as part of a final transcript of record, there should be included evidence of the disposition of any outstanding compensable interests disclosed by the evidence of title which interests are not barred by the condemnation proceedings. For example, an official receipt for the payment of ad valorem taxes should accompany title evidence disclosing unpaid taxes which were a lien on property on the date of taking.

5-15.540 Objections to Taking -- Answer of Defendant

If a defendant wishes to raise an objection to the taking, he/she must answer within 20 days from receipt of notice (ENRD Resource Manual at 7), unless the time is extended. If a defendant files any pleading alleging failure to comply with the requirements of the National Environmental Policy Act of 1969, 83 Stat. 852, 42 U.S.C. § 4321, United States Attorneys should immediately submit to the Department duplicate copies of such pleadings, together with available information as to compliance with this Act by the acquiring agency. Detailed instructions with respect to responding to a challenge to the taking are set forth in the ENRD Resource Manual at 9.

5-15.542 Objections to Taking -- Notice of Appearance

If a defendant merely wishes to appear in the cause to assure notice of any future action to be taken therein, the United States Attorney or field attorney may suggest that he/she file a notice of appearance.

5-15.543 Alteration of Estate Sought to Be Condemned

It may occasionally be to the advantage of all concerned to modify or change the estate being condemned. The Department should be informed promptly of any suggestions which either the United States Attorney or the property owners may have concerning modification, alteration, or change of the estate or description of the property to be condemned, but no alteration of the pleadings should be made except upon receipt of appropriate authorization from the Department.

5-15.544 Exclusion of Property Acquired by Declaration of Taking

The Attorney General is authorized in any condemnation case to stipulate on behalf of the United States to exclude any property or any part thereof or interest therein which may have been taken by the United States by declaration of taking (40 U.S.C. § 258(f)). *See* USAM 5-15.512. The necessity for the exclusion of property acquired by taking generally occurs in two classes of cases:

A. Where the estate taken is not the estate wanted. In cases in which through inadvertence or otherwise title has been taken to property or some portion thereof or an estate or interest therein not desired by the acquiring agency or found subsequently not to be needed for public use, United States Attorneys and field attorneys must obtain the prior authorization of the Department for the exclusion of property.

B. Where a former landowner wishes to remove property not needed by government. In cases in which the landowner desires to remove buildings, trees and shrubs, crops, or fixtures attached to the realty which are not needed or desired by the government, United States Attorneys and field attorneys are authorized to enter into stipulations for the exclusion of property without securing the approval of the Department provided that the exclusion has been approved by the local representative of the acquiring agency. However, if the property is of high value, the specific approval of the Department should be obtained.

5-15.545 Stipulation of Exclusion

The authority of United States Attorneys and field attorneys to enter into stipulations is governed by the nature of the property to be excluded (*see* USAM 5-15.544), but in the event of any question, specific instructions should be obtained from the Department. Detailed instructions with respect to the exclusion or dismissal of land from proceedings are set forth in the ENRD Manual at 10.

In all cases in which a stipulation is entered into for the exclusion of property, the stipulation must contain either a provision fixing the amount by which the just compensation, whether already determined or to be determined, shall be reduced by reason of the exclusion, or a provision to the effect that no claim of whatever nature for just compensation will be asserted in the case or otherwise for the property excluded. If, in the opinion of the acquiring agency, the property to be excluded is of no value or the exclusion will result in a savings to the government by the avoidance of demolition or removal costs, the provisions of this paragraph shall not apply.

A stipulation relating to the removal of property not needed by the government, *see* USAM 5-15.544 should also contain a provision limiting the time for removal by the owner of the property and providing that if the owner fails to remove the property within the prescribed time, the stipulation shall be of no force and effect.

5-15.546 Termination of Temporary Use Cases

Upon receipt of instruction from the Department that the temporary use of property is no longer necessary, the United States Attorney or field attorney should promptly file a motion for the limitation of the term condemned to the date of termination of the temporary use and the surrender of possession of the property by the government. Service of the motion and notice should be made in accordance with Rule 5(b), Fed.R. Civ.P. Proper arrangements should be made promptly for a determination of the extent, if any, of the monetary liability of the government for payment of just compensation by reason of any physical changes of the property resulting solely from the government's use. Generally, there should be obtained an estimate of the cost of physical

restoration, with proper allowance for salvage, and an appraisal reflecting the diminution or enhancement in the fair market value of the property as of the date of termination of the temporary use resulting directly and exclusively from physical changes made by the government.

An appropriate order of termination should be entered covering restoration damages, if any, or finding no further liability on behalf of the government (one certified and one plain copy of such order should be forwarded to the Department) or the case should be set for trial at the earliest practicable date for the adjudication of all claims of the defendants for restoration.

5-15.550 Determination and Payment of Just Compensation -- Right to Trial by Jury or Commission

Rule 71(h), Fed.R. Civ.P., provides that any party to a condemnation case may have a trial by a jury on the issue of just compensation by filing a demand therefor unless the court in its discretion orders that, because of the character, location or quantity of the properties to be condemned, or for other reasons in the interest of justice, the issue of just compensation should be determined by a commission of three persons appointed by the court. The rule further provides that trial of all issues shall otherwise be by the court.

In order to preserve the right to a trial by a jury or commission, a demand for a jury trial should be filed in all major tract cases and in any other cases when by reason of special circumstances the Department requests such demand or the United States Attorney determines that it is in the interest of the United States that a jury trial should be demanded. Major tracts include all tracts involving deposits of estimated compensation of \$150,000 or more and other tracts involving claims for compensation in such amounts and tracts in which significant and complex legal problems may be decided. Under Rule 38(b), Fed.R. Civ.P., a demand for a jury trial may be endorsed upon a pleading. In the cases referred to above, the demand for a trial by jury should be endorsed upon the complaint in condemnation (ENRD Resource Manual at 24 or 25), and notice of the demand should be included in the notice of condemnation. *See* ENRD Resource Manual at 27.

As to all pending cases except those in the major-tract program, United States Attorneys are authorized to waive jury trials if, in their discretion, it is in the interest of the United States to do so, except when contrary instructions are issued by the Department as to a particular case. Juries will be waived in cases in the major-tract program only upon instructions from, or with the prior consent of, the Department.

If it is subsequently determined that the use of a commission is advisable, a motion should be made for the appointment of the commission. The motion should set forth the facts justifying the use of the commission. The order of court appointing the commission should include a finding of fact by the court as to the necessity for use of the commission. Instructions with respect to trial settings, or a hearing before a commission, are set forth in the ENRD Resource Manual at 11.

5-15.552 Retaining Independent Appraisers

Should a United States Attorney find it necessary to retain the services of an independent appraiser, he/she should, before engaging the appraiser's services, submit to the Department a Form OBD-47, together with executed Form USA-157 and, when the appraiser's fee is over \$2,500, Form LN-116 (forms available from the Land Acquisition Section). Instructions with respect to engaging an appraiser are set forth in the ENRD Resource Manual at 12.

5-15.553 Disbursement of Funds Deposited in Court

United States Attorneys and field attorneys are required to actively assist landowners and the court, as *amicus curiae*, in effecting prompt distribution of funds deposited into the registry of the court as just compensation. Duplicate conformed copies of all orders of distribution (ENRD Resource Manual at 41) should be promptly transmitted to the Department. Rule 71(j), Fed.R. Civ.P., which relates to distribution, provides that the court and attorneys shall expedite the proceedings for distribution and for the ascertainment and payment of just compensation in cases in which a deposit is made. Government counsel should obtain promptly and furnish to the court all information available as to the state of the title to the property and any liens, taxes, and encumbrances thereon. Government counsel should also assist landowners in the preparation of motions for, and orders of, distribution, *see* ENRD Resource Manual at 33 and 41, and affidavits for execution by the claimants in support of motions for distribution. Care should be taken to see that a proper order is entered for the payment of all taxes and assessments due and exigible at the time of vesting of title in the United States. Unless serious doubt exists as to the real ownership of the property, government counsel should not delay distribution of just compensation for any extended period for the procurement of curative material for the elimination of defects of title but should rely upon the condemnation procedure for that purpose. Instructions with respect to procedures in disbursing funds deposited in court are set forth in the ENRD Resource Manual at 13.

5-15.554 Refund of Excess Funds Deposited

After a deposit has been made to the registry of the court and it becomes necessary to have a part or all of it returned to the government (because of an abandonment of the case or an overdeposit of estimated compensation), the check representing such refund must be made payable to the Treasurer of the United States and forwarded to the Department for distribution to the proper agencies.

5-15.555 Refund of Balance When Owner Not Locatable

When funds cannot be disbursed because the owner cannot be located, or for other reasons, an order should be sought, as promptly as the court will entertain such orders, for the refund of the undistributed balance to the Treasury of the United States at the expiration of the five-year period pursuant to 28 U.S.C. § 2042. Action pursuant to this section becomes a ministerial duty of the clerk of the court, although copies of the order directing the transfer of funds should be furnished the Department, the clerk of the court will assume the responsibility for the actual transfer of funds pursuant to the court order. In the event a subsequent order is entered for a redeposit of the money for the purposes of withdrawal, it will be the duty of the clerk of the court to submit the court's order directly to the audit section of the Administrative Office of the United States Courts for processing with the Treasury Department. A copy of this order should also be sent to the Department so that the records of the case will be complete. Although the United States Attorneys should assist the landowners in filing the motion to redeposit the funds and advise the court with reference thereto, no further action thereon by either the United States Attorney or the Department will be required to obtain the redeposit.

5-15.556 Reimbursement in Certain Cases for Moving, Relocation and Related Expenses

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, approved January 2, 1971, 84 Stat. 1894, requires the payment by acquiring agencies of moving, replacement, relocation and related expenses of property owners and for certain expenses incidental to the transfer of title to the United States, including reimbursement to the owner for the pro-rata portion of real property taxes paid which are allocable to the period subsequent to the date of vesting title in the United States or the effective date of possession of such real property by the United States, whichever is earlier. Section 102(a) of this Act provides as follows:

The provisions of section 301 of title III of this Act create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

And, Section 102(b) provides as follows:

Nothing in this Act shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to the date of enactment of this Act.

Representatives of acquiring agencies have been instructed to coordinate their activities under the authorizing statute with representatives of the Department of Justice to insure that no duplication of payment will result.

All inquiries by owners or tenants with respect to reimbursements under this statute should be referred to the local representative of the acquiring agency. No changes in existing practices and procedures in handling condemnation cases and particularly in negotiating for settlements in condemnation cases are required by this authorizing statute. However, United States Attorneys and field attorneys should advise the local representatives of the acquiring agency of any case in which an owner or tenant asserts a claim for expenses and other loss and damage alleged to have been incurred by such owner or tenant as a result of the moving of themselves, their families and possessions because of the acquisition of the land. This requirement for notice to representatives of the acquiring agency is particularly applicable in cases for the condemnation of the temporary use of property wherein claims may be asserted for moving costs under the rule established in *General Motors Corporation v. United States*, 323 U.S. 373 (1945).

5-15.560 Post-Trial Motions -- Notification to Division of Awards

Immediately after hearing or trial, send executed Form LDN-18 in triplicate, together with a detailed report of the trial or hearing to the Division with specific recommendations for future action.

5-15.562 Motions for New Trial -- Objections to Commission's Awards

The usual course of action, when awards materially exceed the government's testimony, is to move for a new trial, where the award was made by a jury, or to object to the award made by a commission. Procedures for the United States Attorneys to follow with respect to motions for new trials and objections to a commission's award are set forth in the ENRD Resource Manual at 14.

5-15.580 Judgments

The United States Attorney or field attorney should take care that judgments in condemnation cases include an adjudication of all issues within the jurisdiction of the court. Separate judgments on the several issues in the case should be avoided whenever possible, thus, for example, an order of distribution should be included in a judgment determining compensation. Judgments should not contain recitals of pleadings, reports of commissions or the record of prior proceedings.

5-15.581 Contents of Judgment

Judgments determining compensation should contain:

- A. A finding and adjudication of the right of the United States to condemn the property involved for public use;
- B. An adjudication that title to the exact estate or interest condemned is vested in the United States if the declaration of taking procedure has been used, or, if not, an adjudication that title to the exact estate or interest

will vest in the United States upon payment of the just compensation into the registry of the court and an order vesting title should be entered;

C. Confirmation of the stipulation between the government and the landowners fixing the amount of just compensation or confirmation of the verdict of the jury or the award of a commission appointed by the court to determine compensation;

D. An accurate legal description of the property, which may be referenced to the complaint or declaration of taking;

E. Whenever possible, a finding and adjudication of the right of the defendants to distribution of the just compensation;

F. Provision for the payment of interest, if any, for which the government may be legally liable;

G. Provision for any refund of money deposited into the registry of the court to which the government may be entitled; and

H. An adjudication of any other issue not previously ruled upon formally by the court.

5-15.582 Satisfaction of Deficiency Judgments

Upon the entry of judgments fixing compensation and ordering the deposit of deficiencies, the United States Attorney shall request the Department to secure a check for the necessary amount, except in cases where the acquiring agency is the Department of the Interior, the Departments of the Navy, Army or Air Force, the General Services Administration, the Nuclear Regulatory Commission or the National Aeronautics and Space Administration, in which case the request for the amount of deficiency is sent to a local representative of the acquiring agency. Instructions for securing deficiency checks are set forth in the ENRD Resource Manual at 15.

5-15.590 Recommendation With Respect to Appeals

In any case where he/she believes substantial error has been committed, the United States Attorney shall immediately advise the Land Acquisition Section and give his/her recommendations regarding appeal.

5-15.592 Procedure in Recommending Appeal

If a United States Attorney wishes to recommend that a judgment be appealed, he/she should:

A. Send one certified and one plain copy of the order of the court to the Department.

B. Prepare a recommendation including a statement of the factual and legal issues involved, the rulings of the court which may be grounds for an appeal, the reasons for his/her recommendations and the approximate cost of a transcript of the testimony. The date from which the time for appeal runs should also be stated.

C. Unless otherwise instructed, file a protective notice of appeal just prior to the expiration of the time within which such notice may be filed, but not before then. This is to allow the Department the benefit of the full period of time for appeal to study the case and reach a decision. Two copies of the notice of appeal should be forwarded to the Land Acquisition Section immediately after filing.

The Department will advise the United States Attorney whether to order the transcript of testimony. Note the instructions at USAM 5-8.000 and in USAM Title 2, regarding the handling of appeals.

5-15.600 Settlement and Dismissal of Cases

Except as set forth in USAM 5-15.620 no case under the jurisdiction of the Land Acquisition Section may be settled or dismissed without specific or delegated authority from the Attorney General.

5-15.611 Partial Settlements

Overall settlements for all interest in a tract in a pending condemnation proceeding are much to be preferred over separate settlements for partial interests. Offers not including all interests in a tract will be approved only in exceptional cases and should be explained and justified fully.

5-15.620 Settlement Procedures

Negotiations for compromise settlement always should be attempted, and should be undertaken by the United States Attorney with the cooperation of the local office of the acquiring agency. Negotiations should be initiated or entered into only after the appraisals have been thoroughly examined and found to be sound. If evaluations vary greatly, then consultations with appraisers first should be had to clarify or correct any possible misapplication of the facts or legal principles involved. If the appraisals are not satisfactory, or vary greatly, the United States Attorney should request authority to engage additional appraisers, *see* ENRD Manual at 12.

Settlement should never be sought for statistical purposes. Where settlement negotiations lead to an offer in any case that is deemed by the condemnation attorney to be a reasonable reflection of fair market value, in light of the pertinent appraisal reports, the risks and costs of trial and the effect of the settlement upon other pending cases, he/she is encouraged to consummate the settlement with dispatch, if it is within his/her authority to do so (*see* USAM 5-15.630), or to furnish the settlement offer to the Department for approval (*see* USAM 5-15.640).

Detailed procedures with respect to settlements are set forth in the ENRD Resource Manual at 17.

5-15.630 Authority of United States Attorneys to Settle Condemnation Cases

On January 14, 1983, by Environment and Natural Resources Division Directive No. 3-83, the United States Attorneys were authorized, subject to the limitations imposed in USAM 5-15.631 to accept or reject offers in compromise, without the prior approval of the Environment and Natural Resources Division, of claims against the United States for just compensation in condemnation proceedings in any case in which:

- A. The gross amount of the proposed settlement does not exceed \$200,000.
- B. The settlement is approved in writing (the written approval to be retained in the file of the United States Attorney concerned) by the authorized field representative of the acquiring agency if the amount of the settlement exceeds the amount deposited with the declaration of taking as to the particular tract of land involved;
- C. The amount of the settlement is compatible with the sound appraisal, or appraisals, upon which the United States would rely as evidence in the event of trial, due regard being had for probable minimum trial costs and risks; and
- D. The case does *not* involve the revestment of any land or improvements or any interest, or interests, in land under the Act of October 21, 1942, 56 Stat. 797 (40 U.S.C. § 258f).

5-15.631 Limitations on Delegations

The United States Attorney's authority to settle land acquisition cases may not be exercised when:

- A. For any reason, the compromise of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims totaling more than the respective amounts designated above;

- B. Because a novel question of law or a question of policy is presented, or for any other reason, the offer should, in the opinion of the officer or employee concerned, receive the personal attention of the Assistant Attorney General in charge of the Environment and Natural Resources Division; or
- C. The agency or agencies involved are opposed to the proposed closing or dismissal of a case, or acceptance or rejection of the offer in compromise.

If any of the conditions listed above exist, the matter shall be submitted for resolution to the Assistant Attorney General in charge of the Environment and Natural Resources Division.

5-15.632 Authority of Agency Representatives to Recommend Acceptance or Rejection of Settlement Offers

In Department of the Army acquisitions, the District Engineers have authority to recommend on behalf of their Department the approval or rejection of settlements involving payments of \$40,000 or less, or for greater amounts which are not in excess of the fair market value of the land involved as determined by Department of the Army appraisers. In submitting offers in compromise which require the payment of sums in excess of the authority of the District Engineers in cases for the condemnation of land at the request of the Department of the Army, the United States Attorney or field attorney should urge the District Engineer promptly to submit his/her recommendation for acceptance or rejection of the offer to the Office of the Chief of Engineers whose views will be requested by the Department.

The Naval Facilities Engineering Command of the Department of the Navy has authorized its Field Divisions to approve or reject on its behalf proposed settlements or claims not in excess of 10 percent above the deposit in all cases in which the deposit does not exceed \$250,000. As to settlement offers involving payments in excess of 10 percent above the deposit and in cases wherein the deposit exceeds \$250,000, the United States Attorney should urge the local Field Division promptly to forward its recommendation to: Commander, Naval Facilities Engineering Command, Department of the Navy, Washington, D.C. (Attention: Office of Counsel), whose recommendation will be sought by the Department.

The Regional Commissioners of the General Services Administration have authority to recommend on behalf of their Administration the approval or rejection of any settlement offer. Regional Solicitors of the Department of the Interior have authority to recommend approval or rejection of settlements involving payments of \$500,000 or less. In submitting offers in compromise in excess of \$500,000 the United States Attorney should, in Department of the Interior cases, request the Regional Solicitor to forward his/her recommendation to the appropriate officer in his/her agency whose recommendation will be sought by the Department.

The authority of the above-mentioned field representatives does not relate to settlements which involve the revestment of the title to portions of the lands acquired or interest therein. The field representatives should submit their recommendations as to such offers in the same manner as in settlements involving payment in excess of their delegated authority.

5-15.640 Transmittal of Compromise Offer to Land Acquisition Section -- Recommendations with Respect to Acceptance

Every offer of compromise in a condemnation case, with the exception of those offers within the authority of the United States Attorney to accept or reject (*see* USAM 5-15.630), which the United States Attorney considers may be recommended for acceptance must be submitted to the Department for consideration and acceptance or rejection. The United States Attorney or field attorney shall submit with the offer in compromise:

- A. His/her recommendation;
- B. The range of the government's proposed testimony of value in event of trial;

- C. The probable range of testimony on behalf of the landowner insofar as known;
- D. All available appraisal reports; and
- E. A statement of all other factors pertinent to a determination of the advisability of accepting or rejecting the proposed settlement.

Whenever feasible, the Department should be advised of the recommendation of the local representative of the acquiring agency with respect to the proposed settlement. This recommendation and information should be submitted in triplicate using Form OBD-43 (ENRD Resource Manual at 61). See the ENRD Resource Manual at 43 for suggested forms of stipulation and judgment thereon. The forms for offers involving the revestment of property under 40 U.S.C. § 258f (*see* ENRD Resource Manual at 30) must include the appraisals of the property to be revested and the appraised value of the interest to be retained by the United States.

5-15.650 Dismissal or Abandonment of Condemnation Case

Condemnation cases must not be dismissed as to any of the land included in the instructions to condemn, nor may there be any change as to the interest or estate to be acquired unless expressly authorized by the Department. (*See* USAM 5-15.543 and 5-15.544.) Orders of dismissal must be entered without prejudice. In the absence of a stipulation with the property owner in which he/she waives the right to costs, the federal court may award to the owner of any right, title or interest in such real property such sum as will in the opinion of the court reimburse such owner for his/her reasonable costs, disbursements and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceeding, if the proceeding is abandoned by the United States. *See* Section 304(a), Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub.L. No. 91-646, approved January 2, 1971, 84 Stat. 1906 (*see* USAM 5-15.556). The procedure for dismissal is set forth in Rule 71A(i), Federal Rules of Civil Procedure. Instructions for the termination of cases instituted to acquire the temporary use of property are set forth at USAM 5-15.546. *See* the ENRD Resource Manual at 31 for forms of stipulation and order.

5-15.964 Selection of Qualified Appraisers and Other Experts

The selection and approval of appraisers and other experts is a joint effort of the U.S. Attorney and the Appraisal Unit. U.S. Attorneys should insist that the acquiring agencies which they represent use only appraisers who have been approved by the Department as being acceptable for presentation of expert testimony. Where appraisers who are not adequate for this purpose are employed, money is wasted, since it will be necessary to expend more money for additional appraisals of the same property, and the government may be required to change estimates of value in midstream, thereby impairing settlement opportunities. Where full cooperation is not being received from an acquiring agency in regard to the employment of experts, the matter should be referred to the Assistant Attorney General, Environment and Natural Resources Division, for resolution.

5-15.965 Fees for Appraisers and Other Expert Witnesses

Where expert witnesses' services are necessary, the United States Attorney must insure that the proposed fee is no more than the customary price for such services in the area. Where volume appraisal work is given to an appraiser, the more advantageous fees, which are possible because of volume, should be secured. In those instances where the United States Attorney is uncertain as to the appropriate fee for a given assignment, or where an unusually large fee is involved, the recommendation of the Appraisal Unit should be obtained. Sound business judgment must be exercised in negotiating for services to make sure that the United States is getting full value at not more than the locally prevailing rates. Witness fees must be on a daily rate basis and per diem rates should be accurately prorated to the fraction earned, unless circumstances make this unfair. Fees for appraisal reports should be negotiated on a flat fee basis.